

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Haining Zhou

Heard on: Monday, 27 November 2023

Location: Held Remotely by MS Teams

Committee: Mr Andrew Popat, CBE (Chair)
Dr Beth Picton (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Ms Tope Adeyemi

**Persons present
and capacity:** Mr Ben Jowett (Case Presenter)
Miss Mary Okunowo (Hearings Officer)

Summary: Allegations 1 a), 1 b), 2 a), 2 b), 4 and 5 proved.
Exclusion from membership with immediate effect.

Costs: £5,200

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Miss Haining Zhou. Miss Zhou was not present and was not represented.

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ACCA was represented by Mr Ben Jowett. The papers before the Committee consisted of a main bundle numbered 1 – 249, an “additional” bundle numbered 1 - 30, a supervisor details bundle numbered 1 - 3, a bundle of performance objectives numbered 1 – 66, a service bundle numbered 1 - 20 and a two-page memorandum and agenda.

PRELIMINARY MATTERS

SERVICE OF PAPERS

2. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Jowett on behalf of ACCA and it also took into account the advice of the Legal Adviser.
3. Included within the bundle was the Notice of Hearing dated 30 October 2023, thereby satisfying the 28-day notice requirement, which had been sent to Miss Zhou’s email address as it appears on the ACCA register. The Notice included correct details about the time, date, and remote venue of the hearing, it also notified Miss Zhou of the option to attend the hearing by telephone and to be represented if she wished. Additionally, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in her absence if considered appropriate. A delivery receipt dated 30 October 2023, confirming delivery of the Notice, was also provided.
4. The Committee also had sight of two call notes and two emails dated 22 November 2023 and 24 November 2023. The communications were made by ACCA’s Hearing Officer to Miss Zhou. The first call note records that the line rang out and then was disconnected with no opportunity to leave a message. The second call note of 24 November records that the call was answered, however ACCA’s Hearing Officer could not communicate with the person who answered as they were not speaking English. The two emails were sent after the calls were placed and includes content that informs Miss Zhou of the

upcoming hearing and that a call was made to discuss her attendance at the hearing.

5. The Committee, having considered the relevant documents, was satisfied that Notice had been served in compliance with the Regulations.

PROCEEDING IN ABSENCE

6. Having concluded that proper notice had been served in accordance with the regulations, the Committee went on to consider whether to exercise its discretion to proceed in the absence of Miss Zhou. The Committee took into account that Miss Zhou had been sent a number of emails by ACCA's Hearings Officer asking if she would be attending the hearing with no response being received and that she had also been called.
7. The Committee was of the view that Miss Zhou's attendance was unlikely to be secured through an adjournment as she had not engaged at all, and in the Committee's judgement it appeared that she had voluntarily absented herself. Balancing the interests of Miss Zhou against the wider public interest, the Committee concluded that it was in the interests of justice that the matter proceed expeditiously notwithstanding the absence of Miss Zhou.

BACKGROUND

8. Miss Zhou was admitted as an affiliate to ACCA in 2020, becoming a member on 07 January 2021. In order to apply for membership, Miss Zhou was required to obtain at least 36 months' practical experience in a relevant role ('practical experience'). The practical experience involves the completion of 9 performance objectives (PO's). The experience obtained was to be recorded in a Practical Experience Requirement (PER) training record.
9. In 2021 the Professional Development team of ACCA became aware that 100 ACCA trainees had claimed in their completed PER training records that their PO had been approved by the same supervisor, Person A. Miss Zhou was among the 100. During the course of the investigation a review of the available

records was conducted. The review indicated that the PO Statements had been copied amongst a large number of the 100 trainees.

10. Person A when contacted denied having supervised any of the 100 trainees including Miss Zhou. The matter was therefore referred to ACCA's investigations teams. By this point Miss Zhou had been admitted to ACCA membership.
11. In respect of Miss Zhou's own PO statements, all 9 of them were recorded as having been approved by Person A on the same day. Further, ACCA state that following analysis of Miss Zhou's PO ACCA statements, the content of three of them were the same, or significantly similar to the PO's contained in the PER's of other ACCA trainees who claimed to have been supervised by Person A.
12. In light of the concerns and following referral of the matter to ACCA's Investigations Team, Miss Zhou was sent a letter by encrypted email on 01 September 2022 which set out the complaint and requested that she respond to a number of questions by 15 September 2022. A non - encrypted email was sent the same day asking that she check that she had received an encrypted email. Miss Zhou did not respond to the letter or the subsequent reminders. ACCA state that a mobile message was also sent to Miss Zhou by ACCA's China office to which there was also no response.

ALLEGATIONS

13. The allegations faced by Miss Zhou are set out below:

Haining Zhou ('Miss Zhou'), at all material times an ACCA trainee,

1. *Applied for membership to ACCA on or about 30 December 2020 and in doing so purported to confirm in relation to her ACCA Practical Experience training record:*
 - a) *Her Practical Experience Supervisor in respect of her practical experience training in the period from 09 October 2017 to 30*

December 2020 was Person 'A' when Person 'A' did not supervise that practical experience training in accordance with ACCA's requirements as published from time to time by ACCA or at all

b) She had achieved the following Performance Objectives which was not true:

- Performance Objective 8: Analyse and interpret financial reports*
- Performance Objective 9: Evaluate investment and financing decisions*
- Performance Objective 11: Identify and manage financial risk*

2. Miss Zhou's conduct in respect of the matters described in Allegation 1 above was:

a) In respect of Allegation 1a), dishonest, in that Miss Zhou sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise which she knew to be untrue.

b) In respect of Allegation 1b) dishonest, in that Miss Zhou knew she had not achieved any or all of the performance objectives referred to in paragraph 1b) above as described in the corresponding performance objective statements or at all.

c) In the alternative, any or all of the conduct referred to in Allegation 1 above demonstrates a failure to act with Integrity.

3. In the further alternative to Allegations 2a), 2b) and or 2c) above, such conduct was reckless in that Miss Zhou paid no or insufficient regard to ACCA's requirements to ensure:

a) Her practical experience was supervised;

in which she asserted that she had only supervised the practical experience training of one individual and that individual was not Miss Zhou. The Committee considered Person A's evidence to be clear and credible and found no reason to disbelieve them. The Committee also bore in mind the evidence presented by ACCA that Person A had been named as supervisor for 99 other people. It was considered unlikely that Person A could have properly acted as a supervisor to such a large number of people. Taking everything together the Committee was satisfied that Person A had not supervised Miss Zhou and therefore this allegation was found proved.

Allegation 1 (b) – Proved

16. A copy of Miss Zhou's PER training record that included a statement describing the experience she gained to meet her POs was provided. Also provided was evidence of the wording of the performance objectives of other individuals who had named Person A as their supervisor.
17. The Committee reviewed the content of the documents outlined and noted that the statements provided by Miss Zhou for POs 8, 9 and 11 contained wording that was strikingly similar to the wording of the POs of other individuals supervised by Person A. The Committee concluded that in light of the similarities that it was obvious the objectives put forward by Miss Zhou had been copied and were therefore not her own.
18. The Committee found this allegation proved to the requisite standard.

Allegation 2 (a) in respect of Allegation 1a) – Proved

19. The Committee moved on to consider whether Miss Zhou acted dishonestly in confirming Person A was her supervisor. It considered this Allegation in light of the test for dishonesty, as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
20. The Committee had found that Person A had not supervised Miss Zhou, having taken particular note of Person A's comments that they had only supervised

one individual who was not Miss Zhou. The Committee were satisfied that in the circumstances, Miss Zhou would have clearly known that Person A was not her supervisor. It was also noted that Miss Zhou had not provided any explanation as to why she had claimed Person A was her supervisor when it appeared that they were not. The Committee was of view that Miss Zhou's action in claiming that Person A was her supervisor when she knew they were not would undoubtedly be regarded as dishonest conduct by ordinary decent people.

Allegation 2 (b) in respect of Allegation 1b) – Proved

21. The Committee also considered whether Miss Zhou acted dishonestly in confirming that she had achieved all or any of the performance objectives set out in the training record. The Committee was satisfied, having found that the performance objectives 8, 9 and 11 were not Miss Zhou's own, that it was unlikely she had met those objectives. The Committee was satisfied that Miss Zhou's conduct in claiming that she had met objectives she had not met would be regarded as dishonest by ordinary decent people. It follows therefore that the Committee found this allegation proved.

Allegation 2 (c) – N/A

22. As the Committee found the conduct was dishonest, it was not necessary for it to consider whether the behaviour demonstrated a failure to act with integrity, since this was alleged in the alternative.

Allegation 3 - N/A

23. As the Committee found the conduct was dishonest it was not necessary for it to consider whether the behaviour was reckless, since this was alleged in the alternative.

Allegation 4 (a), (b) and (c) – Proved

24. Copies of letters sent by email to Miss Zhou following the referral of the matter to ACCA's investigation team were provided. The first letter dated 01 September 2022 sets out the nature of the complaint and requests that Miss Zhou respond to a series of questions by 15 September 2022. Reference is made in the letter to the Regulations which require members to cooperate with ACCA's investigations by the deadline's specified. Copies were also provided of reminder emails sent to Miss Zhou on 16 September 2022 and 03 October 2022. The screenshots from ACCA's records show that all the emails were sent to the email address Miss Zhou had provided ACCA with. Additionally, the Committee were provided with evidence that all of the emails were accessed and opened.
25. Miss Zhou was under a clear duty to co-operate with her regulator, ACCA, by virtue of Complaints and Disciplinary Regulation 3(1). She had not complied with this duty as evidenced by her lack of response. Overall, the Committee was satisfied that Miss Zhou had received the correspondence and failed to respond and therefore found this allegation proved in its entirety.

Allegation 5 (a) – Proved

26. The Committee considered whether Miss Zhou's actions amounted to misconduct bearing in mind the definition set out in ACCA Bye – Law 8(a) (c), the test provided by the courts in *Roylance v. General Medical Council (No.2) [2000] 1 AC 311* and the guidance given in *Nandi v. General Medical Council [2004] EWHC 2317 (Admin)*.
27. The Committee was satisfied Miss Zhou's action in confirming Person A was her supervisor when they were not and in stating that she had achieved performance objectives she had not, amounted to misconduct. The behaviour was serious, disreputable to the profession and was of a nature that fellow members of the profession would regard as deplorable.
28. The Committee also found that Miss Zhou's failure to co-operate fully with the ACCA investigation amounted to misconduct. The ACCA relies on the co-operation of its members to carry out its functions as a regulator. A failure to

co-operate not only undermines the ACCA's ability to function effectively as a regulator but also undermines its standing as a regulatory body.

Allegation 5(b) – N/A

29. As the Committee found that Miss Zhou's behaviour amounted to misconduct it was not necessary for it to consider whether it was liable to disciplinary action pursuant to bye – law 8(a) (iii) 4 as this was alleged in the alternative.

SANCTION AND REASONS

30. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett on behalf of ACCA. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Miss Zhou but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct. Furthermore, any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser and considered the sanctions, starting with the least serious sanction first.
31. The Committee turned first to consideration of the aggravating and mitigating features in this case. The Committee were informed that there were no previous regulatory findings against Miss Zhou. The Committee considered this to be a mitigating feature.
32. The Committee considered that there were a number of aggravating features. It appeared that Miss Zhou's conduct in forwarding the POs to ACCA was pre-meditated. Miss Zhou had also been able to gain admission to Membership of ACCA by virtue of her actions. Obtaining admission by such means undermined the legitimacy of the ACCA qualification. Further, the Committee considered there was potential for harm to the public through Miss Zhou's practice as an accountant bearing in mind her dishonest conduct found proved.

33. The Committee did not think it was appropriate, or in the public interest, to take no further action or order an admonishment in a case where a member had failed to comply with ACCA's codes and regulations and had acted dishonestly.
34. The Committee then considered whether to reprimand Miss Zhou. The guidance indicates that a reprimand would be appropriate in cases where the misconduct is of a minor nature, there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved. The Committee did not find those factors to be present in the current instance.
35. The Committee moved on to consider whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public and there is evidence of the individual's understanding and appreciation of the conduct found proved. The Committee considered none of these criteria to be met.
36. The Committee went on to consider the guidance relating to exclusion from membership. Miss Zhou's misconduct involved failure to co-operate with her regulator and dishonesty. These features, coupled with the absence of any evidence demonstrating Miss Zhou's understanding of the seriousness of her behaviour and any steps taken to remediate her conduct are fundamentally incompatible with her continued membership. In all the circumstances the Committee considered exclusion to be the most appropriate and proportionate sanction.

COSTS AND REASONS

37. ACCA applied for costs in the sum of £5,924.58. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. A simplified breakdown was also provided. The Committee had no information about Miss Zhou's circumstances.

38. The Committee was satisfied that ACCA was entitled to claim its cost. The costs appeared to have been reasonably and proportionately incurred, however it considered it appropriate to make a deduction to the amount claimed having regard to the reduced hearing length. The Committee therefore ordered Miss Zhou to pay ACCA's costs in the sum of £5,200.

EFFECTIVE DATE OF ORDER

39. The Committee determined that it would be in the public interest for the order to take immediate effect in light of the fact Miss Zhou is potentially able to practise as an ACCA qualified accountant having gained that qualification dishonestly. Therefore, pursuant to Complaints and Disciplinary Regulations 2014 ('CDR'), the order removing Miss Zhou from membership will take effect immediately.

Mr Andrew Popat, CBE
Chair
27 November 2023